(9)

CHHOR

Single Bench

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

W.P.NO.3811 OF 2003

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

PETITIONER : Shivrajdas, S/o. Shri Nirmaldas, aged about 48 years, R/o Salhe, Tahsil Dabhara and District Janjgir Champa (C.G.),

P. R. No. 3554/03
Presented by Shri M.K. Sinha
dated 13/11/03

VERSUS

RESPONDENTS : 1) The Board of Revenue Chhattisgarh Bilaspur acting through its Registrar

: 2) State of Chhattisgarh Acting through Collector Janjgir-Champa (C.G.)

: 3) Jagdishwar S/o. Shri Chandra Bhushan, R/o Dabhra, District Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT / WRITS, ORDER / ORDERS DIRECTION/DIRECTIONS ETC.

13.11.03

(60)

HIGH COURT OF JUDICATURE, CHHATTISGARH (BILASPUR)

Writ Petition No.3811 of 2003

Shivrajdas

Versus

The Board of Revenue, Chhattisgarh and others.

POST FOR ORDER ON 27.01.2004

Sd/-
L.C.BHADOO
Judge

27.01.2004

(61)

HIGH COURT OF JUDICATURE, CHHATTISGARH (BILASPUR)

Writ Petition No.3811 of 2003

Shivrajdas

Versus

The Board of Revenue, Chhattisgarh and others.

Shri N.P. Kela, counsel for the petitioner.

Shri Ranbir Singh, Govt. Advocate for respondent No.2.

O R D E R

(Passed on 27th January 2004)

As per L.C. Bhadoo J.

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India whereby he has challenged the order dated 01.12.2000 passed by the Naib Tehsildar, Dabhra in Revenue Case No. 5-A/1999-2000, order dated 30-3-2001 passed by the Sub Divisional Officer, Dabhra in Revenue Appeal No.22/A-56/2000-01, order dated 12-2-2002 passed by the Commissioner (Revenue), Bilaspur in Revenue Appeal No.158/A-56/2000-01 and order dated 12-09-2003 passed by the Board of Revenue, Chhattisgarh, Bilaspur in Revision No.11/A-56/2002-03.

2. I have heard Shri N. P. Kela, learned counsel for the petitioner and Shri Ranvir Singh, learned Govt. Advocate for Respondent No.2, on admission.

3. Brief facts leading to filing of this petition are that the petitioner is son of former Kotwar Nirmal Das of village-Salhe, Tehsil -Dabhra, District- Janjgir Champa. The case of the petitioner is that he belongs to a family of Kotwar his great-grand-father Meghnath was Kotwar of village- Salhe, a land of 3.97 acres was given to him by the then Malgujar in lieu of Kotawri. After death of Meghnath his son Janakram was appointed as Kotwar some land was also given to him, thereby he was in possession of 10 acres of land. Thereafter,

Janakram resigned from the post of Kotwar and in his place his son Nirmaldas was appointed as Kotwar and he was continuously working on the said post.

4. In the year 1999 after the elections of Lok Sabha, Nirmaldas suffered from a paralytic stroke, however he continued to do the work with the help of his sons. Some persons made a complaint against Nirmaldas that because of his illness he is not in a position to perform his duties as Kotwar and without performing the duty, he is getting salary, upon which a show cause notice was served on Nirmaldas and he resigned from the post of Kotwar, therefore, the post of Kotwar of village- Salhe was lying vacant.

5. A proclamation inviting applications for the post of Kotwar was issued by the Naib Tehsildar in Revenue Case No. 5/A-56/99-2000. In response to the proclamation the petitioner being son of former Kotwar applied for the post of Kotwar, some other persons also applied for the said post. The petitioner being son of former Kotwar was entitled for the preferential right over the other applicants under the provisions of Law. However, in total disregard of that provision of Law the Naib Tehsildar selected and appointed one Jagdishwar Prasad S/o Chandra Bhushan on a false pretext that the father of the petitioner was removed on some allegations therefore the petitioner was not entitled for any preference in appointment on the post of Kotwar.

6. Learned counsel for the petitioner submits that the petitioner being the son of the former Kotwar he was entitled for preferential treatment in view of the provision of Section 230 (4)(2) of the Land Revenue Code. The person selected on the post of Kotwar of village- Salhe is 6th class pass whereas the petitioner is 5th class pass and the petitioner's case has wrongly been rejected on the ground that his father had drawn the salary without performance of the work.

7. On the other hand learned Govt. Advocate opposed the arguments of learned counsel for the petitioner and submitted that the father of the petitioner was found drawing salary without performing work on a complaint made by the villagers

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therefore the petitioner was not entitled for preference in the appointment.

8. I have perused the order passed by the Board of Revenue. In para-4 of the order it has been mentioned that in response to the notice inviting applications the applicants were entitled to submit their application up to 24.7.2000 whereas the petitioner submitted his application on 5.9.2000. It has been further mentioned that the person selected on the post of Kotwar of village- Salhe is more educated than the petitioner; and in view of the statement of Shivraj in which it has come on record that during the illness father of the petitioner used to collect his salary without performing his duties even he used to go to collect the salary on a bicycle of his son. Learned Board of Revenue, Additional Tehsildar, Sub Divisional Officer (Revenue) and Commissioner, all the courts have held that the father of the petitioner was suffering from paralysis and he was not able to perform the duties and even then he used to draw his salary and the Sub Divisional Officer (Revenue) has also considered the antecedents of the petitioner as doubtful. The father of the petitioner – former Kotwar even did not inform about his illness to the department and without informing to the department he continued to draw his salary therefore the petitioner was not entitled for any preferential treatment.

9. As all the four courts have reached to the same conclusion, there is concurrent finding of the facts that the father of the petitioner was found drawing salary without performing his duties therefore he was not sincere to his duties and drawn his salary without performing duties, as such the petitioner was not entitled for the preferential treatment. This is a general provision under the service law that compassionate appointment on a preferential treatment are given to the wards of those former employees who had served the department with utmost sincerity, dedication and devotion and their service record is good and unblemished. As has been held by the four courts in this case the service record of the former Kotwar – father of the petitioner was not good and that is why

the petitioner was denied for preferential rights. There is no material before me to take a different view from which has been taken by all the four courts and there is no justification to interfere with the concurrent findings of the four courts. Under Article 227 of the Constitution of India the High Court is entitled to interfere with the impugned order under the supervisory jurisdiction only when the subordinate Court has exercised the jurisdiction which was not vested in it or exceeded his jurisdiction or the order has been passed contrary to the settled principles of law and if the order impugned is allowed to be exists that will work as a failure of justice. None of the above test satisfies in the present case, therefore, I am not inclined to interfere with the order passed by all the four courts below.

10. In view of the above, there being no substance, the petitioner's petition is liable to be dismissed, and the same is dismissed.

Sd/-
L.C.BHADOO
Judge